BORA LASKIN LAW LIBRARY
3 1761 06102079 8

UNIVERSITY OF
TORONTO
FACULTY OF LAW

CONSTITUTIONAL LITIGATION

CASES AND MATERIALS
VOLUME I

PROFESSOR L. WEINRIB

1ST TERM – SEPTEMBER TO DECEMBER 2006

FACULTY OF LAW
UNIVERSITY OF TORONTO

Storage

KE
4218.5
.W46
2006a
v.1
c.1

THESE MATERIALS ARE REPRODUCED AS CLASS MATERIAL

BORA LASKIN LAW LIBRARY
SEP - 8 2006
FACULTY OF LAW
UNIVERSITY OF TORONTO

CONSTITUTIONAL LITIGATION
FIRST TERM –SEPT TO DEC 2006
TABLE OF CONTENTS

VOLUME 1: **Page**

1. **The Rights Revolution in the Post WWII World of Liberal Democracy**
Torbjorn Vallinder, "The Judicialization of Politics – A World-wide Phenomenon: Introduction" 1
Charles R. Epp, "The Conditions for the Rights Revolution: Theory 6
C. Neal Tate, "Some Introductory Notes" 14
Lon Fuller, "The Two Basic Principles of Social Ordering" 16
Abraham Chayes, "The Role of the Judge in Public Law Litigation" 23
"Judges not power hungry: McLachlin" 28
Newspaper coverage of Charkaoui case in SCC
James Travers, Toronto Star, "Our top court faces a daunting task" 30
Tonda MacCharles, Toronto Star "Terror suspects' rights violated, top court told" 32
The Globe and Mail, Editorial, "The security certificate is an acceptable tool" 35
Tonda MacCharles, Toronto Star 37
Kirk Makin, The Globe and Mail, "Security trumps all, Crown tells top court;" 40

2. **Role of the Atttorney General and Minister of Justice**
Debra M. McAllister, "The Attorney General: Guardian of the Public Interest in Charter Litigation" (2003) 21 Windsor Yearbook of Access to Justice 43
James B. Kelly, "Governing with the Charter of Rights 86
Chrisopher McCrudden, "Mainstreaming Human Rights" (draft) 104
Shawn McCarthy, The Globe and Mail, "The War on Terror", October 16, 2001 109
Transcript of Audio Tapes of Proceeding, Supreme Court of Canada, *Miron v. Trudel*, undated 112
Statutes & Rules (Federal and Ontario)
Department of Justice Act 121
Supreme Court Act, s. 53 References by Governor-in-Council 123
Ministry of the Attorney General Act, Ontario 124
Courts of Justice Act, s. 109 Notice of Constitutional Question (Ontario) 126
Rule 4.11, Notice of Constitutional Question 127
Notice of Constitutional Question, Form 4F 128
Newspaper Coverage of U.S. Justice Department 129

3. **Process and Procedure**
a) in the trial and appellate courts
Robert Charney, "Civil Procedure in Charter Litigation" 150
Christopher Bredt and Michelle Dwyer "Charter Litigation: Forum and Process" 165
Peter A. Cumming, "Class Proceedings and the Charter" 183

b) Supreme Court of Canada
Eugene Meehan, "Constitutional Questions" 189
Eaton v. Brant County Board of Education (1997), 142 D.L.R. 4th 385 196
Bell ExpressVu Limited Partnership v. Rex, [2002] 2 S.C.R. 559, extract 201

Forms:
Form 61B, Notice of Intervention Respecting Constitutional Question 206
Form 61A, Notice of Constitutional Question 207
Form 52, Notice of Motion to the Court 208

Ian Binnie, "A Survivor's Guide to Advocacy in the Supreme Court of Canada" 209
Eugene Meehan, "Advocacy Issues in Charter Litigation: Basic Pointers and Precedents 223
Eugene Meehan, "Excellence in the Supreme Court" 225

4. Standing and Mootness

a) Standing

Dale Gibson, "Enforcement of the Canadian Charter of Rights and Freedoms" 226
David W. Stratas, "What's New in Charter Remedies" 240
F.L. Morton, *Borowski and Morgentaler: Abortion, the Charter and the Courts* 241
Borowski v. A.G. Canada et al., [1989] S.C.R. 342, 57 D.L.R. (4th) 231 249
Canadian Council of Churches v. The Queen and the Minister of Employment and Immigration, [1992] S.C.R. 236 252
Canadian Egg Marketing Agency v. Pineview Poultry Products Ltd., 1998 Can. Sup. Ct. LEXIS 49, extract 259
Vriend v. Alberta [1998] 1 S.C.R. 493, extract 263
Chaoulli v. Quebec [2005] 1 S.C.R. 791, extract 266

b) Mootness

Borowski v. Canada [1989] S.C.R. 342, extract 270
New Brunswick (Minister of Health and Community Services) v. G. (J.), [1999] 3 S.C.R. 46, extract 276
Doucet-Boudreau v. Nova Scotia (Department of Education) [2003] 3 S.C.R. 3, extract 280